

Senate State Affairs

DNR Navigability Presentation 1/24/13



Public Access Assertion and Defense Unit (PAAD)



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PAAD Mission Statement

- ◆ Protecting the Alaska's future through the assertion and defense of access to Alaska's Public Lands and Waters



Statewide Policy Issues

- ◆ Statehood entitlements
- ◆ Navigability
- ◆ RS 2477
- ◆ ANCSA Easements
- ◆ Day to Day Litigation Strategy



Defending Title to State Submerged Lands During the ANSCA Conveyance process



Interagency Navigability & Access Team



- ◆ Department of Natural Resources
- ◆ Department of Fish and Game
- ◆ Department of Law

Equal Footing Doctrine

- ◆ All states are admitted to the union on equal footing with the other states, including the 1953 Submerged Land Act, which granted the title to the submerged lands beneath Navigable waters



Case Law

- ◆ Daniel Ball
- ◆ Utah (Salt Lake)
- ◆ Kandik/Nation
- ◆ Gulkana
- ◆ PPL Montana
(susceptibility confirmed)



Is it Navigable?

- ◆ Submerged lands
- ◆ Tidelands
- ◆ Shorelands
- ◆ Public Trust or title



Whose land is it?



Title Navigability

- ◆ **AS 38.04.062.**
Identification of State Submerged Land.
- ◆ **(g)** In this section,
- ◆ **(1)** "navigable water" means water that, at the time the state achieved statehood, was used, or was susceptible of being used, in its ordinary condition as a highway for commerce over which trade and travel were or could have been conducted in the customary modes of trade and travel on water; the use or potential use does not need to have been without difficulty, extensive, or long and continuous;(Daniel Ball)



Public Trust Navigability

Public Trust Doctrine providing that shorelands, submerged and submersible lands are preserved for public use, including but not limited to, navigation, fishing, and recreation; and the State of Alaska, as trustee for the people, bears responsibility of preserving and protecting the right of the public to the use of waters for those purposes.



Art VIII Sec 14 Access to Nav Waters



- ◆ Free access to the navigable or public waters of the State, as defined by the legislature, shall not be denied any citizen of the United States or resident of the State, except that the legislature may by general law regulate and limit such access for other beneficial uses or public purposes.

Ordinary High Water Mark



- ◆ The ordinary high water mark (OHWM) is the boundary between **non-tidal waters** and adjoining uplands.

Quiet Title Actions

- ◆ “Quiet” other claims to our title
- ◆ Expensive
- ◆ Time consuming
- ◆ Uncertain outcome
- ◆ Necessary when no other option exists



Recordable Disclaimers of Interest

- ◆ Cost effective (\$50K) alternative to filing a quiet title action (QTA cost upwards of \$1 mil.)
- ◆ Alaska has the only successful RDI process in the US
- ◆ 20 Recorded RDIs
- ◆ May be an alternative solution for RS 2477 litigation, if BLM sufficiently funds program



Current Issues/Litigation

- ◆ Mosquito Fork
- ◆ Kotsina River
- ◆ Fog Lake/Dream Creek
- ◆ Lemon Creek
- ◆ Skagway
- ◆ Sturgeon/Nation River



Mosquito Fork

- ◆ State Mining Claim
- ◆ Wild and Scenic (Fed)
- ◆ Non Nav by Feds
- ◆ Filed Complaint
- ◆ BLM Denied
- ◆ Discovery Phase
- ◆ Floated, Hydro



Kotsina River

- ◆ In the case of braided streams and delta areas where there can be several stream channels or the channels frequently shift naturally, the stream bed is defined as lying between the outer OHWM of the most distant channels.



Fog Lake/Dream Creek

- ◆ Public Trust, and title navigability
- ◆ Lodge owner leasing “private” river, lake
- ◆ Violates PTD and Art VIII Sec 14



Lemon Creek

- ◆ Tidelands held in trust for future state
- ◆ pre-statehood patents issued.
- ◆ Conflicts over gravel ownership



Skagway

- ◆ Mining gravel in State navigable river bed
- ◆ Filling riverbed behind flood dykes
- ◆ Settled and recorded
- ◆ 20+ year conflict settled



Sturgeon/Nation River

- ◆ Adjudicated
- ◆ Smallest
- ◆ Excellent History
- ◆ Reserved Water Rights Doctrine
- ◆ ANILCA did not include state lands



What Kind of Boat Before Statehood?

- ◆ Historic skin boats, pre-statehood subsistence
- ◆ Gulkana Raft capable of carrying 1000 lbs
- ◆ Poling boats
- ◆ Freight canoes (Kandik, Nation)



Historic Poling Boat



Crude Oar Lock

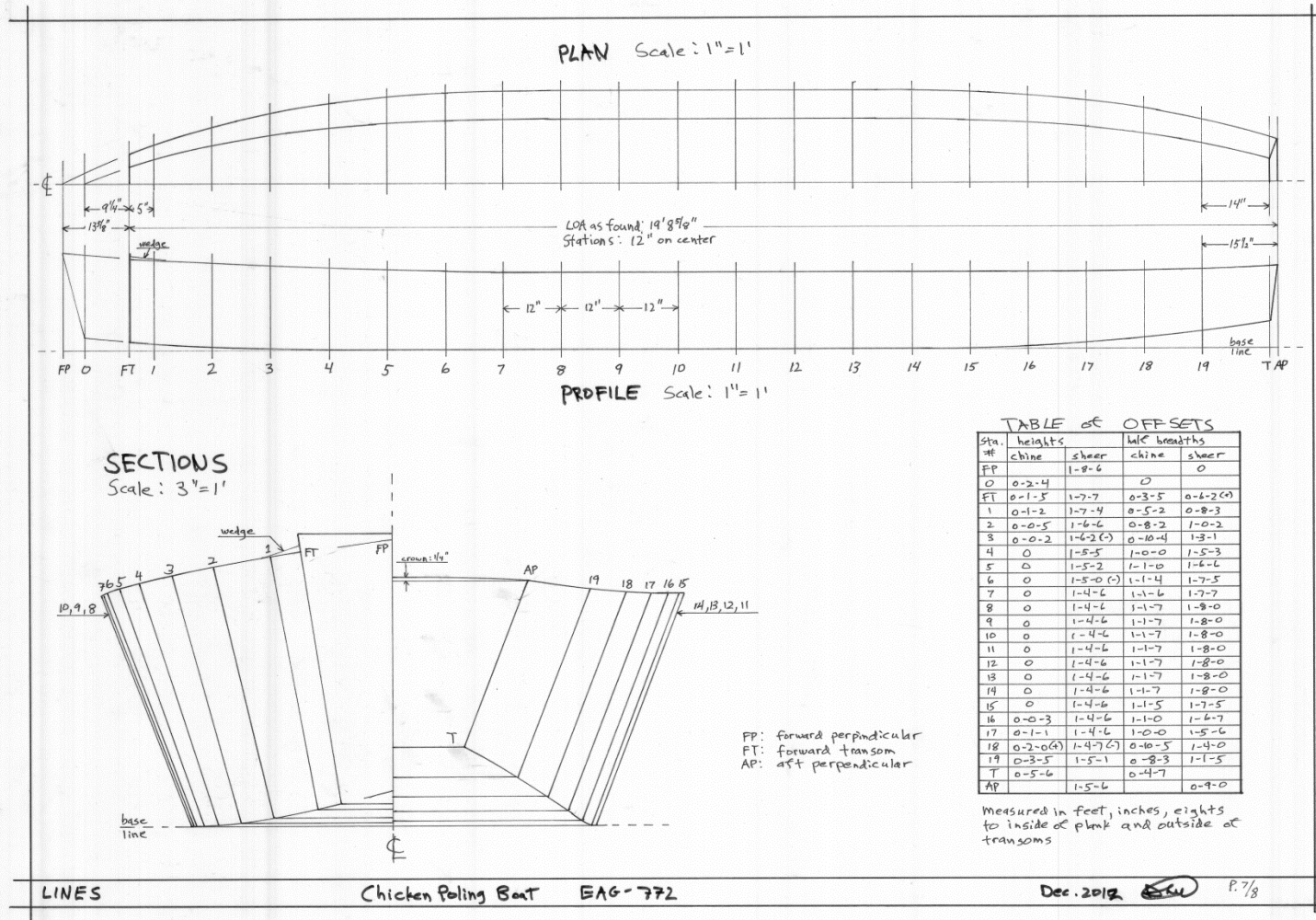


OHA Archeological Team

- ◆ Office of History Archeology is a key partner supporting our litigation with history and archeological research



Historic Poling Boat



Historic Poling Boat

